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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

INCOME TAX REFERENCE NO. 231 of 1988

The Commissioner of Income Tax
Bombay City VIII ... Applicant.

vs.

Smt. Nargis Merchant
c/o. Bilawala & Co., Hamam Street,
Bombay 400 023. ..... Respondent

With

INCOME TAX REFERENCE NO. 182 of 1988

The Commissioner of Income Tax
Bombay City VIII ... Applicant.

vs.

Smt. K. S. Billawala,
May Flower, Carmichal Road,
Bombay 400 023. ..... Respondent

Mr. Ashok Kotangale, senior counsel, i/b. K.C. Sidhwa, for Applicant

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Mr. P. J. Pardiwala for Respondent.

CORAM: V**. C. DAGA & A. S. AGUIAR JJ.**

Date: 27th June, 2005.

ORAL JUDGMENT: (Per A. S. Aguiar J.)

1. The substantial questions of law referred to under section 256(1) of the Income-tax Act for consideration of this court by the Tribunal at the instance of the Revenue are as follows:

> (1) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the silver utensils weighing 150 kgs. constituted personal effects of the assessee and they did not constitute capital assets as defined in section 2(14) of the Income-tax Act , 1961?
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> (2). Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that profits received on the sale of silver utensils weighing 150 kgs.,

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were not liable to capital gains tax under section 45 of the Income-tax Act , 1961?"

2. The brief facts leading to the order of the Income-tax Tribunal are as follows. The assessee are individuals. The Assessment Year is 1976-77. The relevant accounting year ended on 31.3.1976. The assessee had derived income from speculation business in the relevant accounting year. Under the Voluntary Disclosure Scheme of 1975, the assessees disclosed in December 1975 to have sold certain silver utensils weighing about 150 kgs., said to have been acquired before 1961, for Rs.1,65,476/-. The said utensils were alleged to have been acquired for Rs.30,000/- . There was thus surplus of Rs.1,35,476/- out of the sale of the silver items consisting of 24 thalis, 48 watka, 24 spoons, 24 glasses, 1 fruit bowl, 6 small bowl, 1 ice-cream set (24 pieces) – approximately weighing 150.00 kgs.. The assessees claimed that these items of silver were personal effects. The assessees' claim was rejected by the ITO as there was no evidence to indicate that these utensils were of daily use and hence he brought the surplus to capital gains tax. The assessees filed an appeal before the CIT, who confirmed the order

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of the Income Tax Officer. In appeal before the Tribunal the assessees undertook to file affidavits in respect of their claim that the silver utensils were their personal effects. In view thereof the Tribunal referred the matter back to the Commissioner of Income Tax (Appeals) and the assessee filed this affidavit, claiming that they were members of a large family and used the utensils on ceremonial occasions. The Commissioner of Income Tax (Appeals) on the basis of the averments made in the affidavit held that the silver utensils were the personal effects of the assessee and that they fall under the category of personal effects within the meaning of Section 2(14) of the Income Tax Act and accordingly held that they did not constitute capital assets and deleted the sum of Rs.1,34,476/- from the total income of the assessee.

3. In appeal, Tribunal rejected the department's contention that since the utensils were used only on ceremonial occasions they were not the assessee's personal effects. The Income Tax Tribunal affirmed that the silver utensils in the assessees' possession were their personal effects and therefore , not liable to capital gains and directed deletion of capital gains tax from the income of the

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assessees.

4. Before this court it was contended by the Revenue that the silver utensils in such large quantities would not form part of the personal effects, specially since the assessees do not fall within the category of exceptionally rich person to have the use of such large quantity of silver utensils for normal use. It is pointed out that as contended by the Income Tax Officer, admittedly the assessees were not rich person. The Income Tax Officer was of the view that persons of the social status as the assessees could not be expected to be using such large quantity of silver utensils in normal course and even on festive occasions. Reliance was placed by the Income Tax Officer on the decision of the Supreme Court in the case of **H. H. Maharaja Rana Hemant Singhji vs. Commissioner of Income Tax, Rajasthan** [1976] 103 ITR page 61, wherein the Supreme Court held that personal effects include only those articles which are intimately and commonly used by the assessee. Relying on the observations of the Supreme Court the Commissioner of Income Tax (Appeals) held that personal effects must have intimate connection with the assessee and must have a close relation to the ' prson' of the

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possessor. Personal effects include only those articles which are worn or carried about the person. Ornamental use, for special occasion like birthdays etc.

5. On the other hand, learned counsel for Respondent has placed reliance on the judgment of the Bombay High Court in the case of **Jayantilal A. Shah vs. K. N.Anantharam Aiyar, Commissioner of Income Tax, and ors**., reported in [1985] 156 ITR P. 448 wherein this court referred to the observations of the Supreme Court in the case of **H. H. Maharaja Rana Hemant Singhji** (supra) , and pointed out that in that case the Supreme Court was required to consider old silver rupee coins, gold sovereigns and silver bars which were used by the assessee on religious festivals. And the Supreme Court observed that the silver bars or bullion can, by no stretch of imagination, be deemed to be “effects” meant for personal use. In the said case the Supreme Court held that the expression “intended for personal or household use” meant normally, commonly or ordinarily intended for personal or household use. The High Court observed that it would not be correct to say that the Supreme Court has considered only those items as personal effects which have

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been intimately connected with the person of the assessee. The High Court further observed that the very fact that furniture is also included in personal effects would show that the articles need not have an intimate connection with the person of the assessee. All that is required is that the article should be meant for personal use of the assessee in the ordinary course. In the said decision of this Court in **Jayantilal A. Shah,** reference is made to the case of **CIT vs. Sitladevi N. Poddar** [1984] 148 ITR 506, where the Division Bench of this court was required to consider a similar question in somewhat a similar context. In that case the assessee had sold certain silver utensils and the court held that such utensils were personal effects because they were ordinarily intended for personal or household use. Reference is also made to the case of **H. H. Maharani Usha Devi v. CIT** [1982] 133 ITR 43 (MP), wherein the jewellery which was meant for use by the assessee on ceremonial occasions was considered as "personal effects" of the assessee.

6. As held by this court in the case of **Jayantilal A. Shah** , the Commissioner of Income Tax has applied a restrictive test not warranted by section 2 (14) of the Income Tax Act. He has held that

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because these articles were not normally in daily use, they could not be considered as personal effects. This court further observed that this appears to be an incorrect test because all personal effects need not be used daily. So long as they are meant for personal use, they wil have to be considered as personal effects. The court also observed that the decision of the Commissioner was based on a misreading of the decision of the Supreme Court in the case of **H. H. Maharaja Rana Hemant Singhji** (supra).

7. The observation of the Income Tax Officer in the present case regarding the assessee's social and financial status is merely his opinion unwarranted in the facts of the case and the legal position as to the meaning of “personal effects” given in several decisions of this court. The ITO had rejected the assessee's contention that the silver items which were all utensils, were the personal effects of the assessee as they were not of such financial or social status that they could be expected to use them even on ceremonial occasions. We are afraid we cannot accept the ITO's argument. His conclusions are without any factual basis. On the other hand the assessees have filed affidavits that they were members of a large family (12 in

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number) and that they used their silver utensils on ceremonial occasions. The CIT Appeal has also accepted the claim of the assessees as stated in their affidavits. There was no reason for the ITO or the Tribunal to have come to a different conclusion. The fact that the assessees had purchased such a large quantity of silver utensils would indicate that they were persons of some means, though not belonging to a very rich or royal family. It was not uncommon for persons who were fairly well-of in those days to purchase silver utensils for use albiet on ceremonial occasions only. The fact that the silver possessed by the assessees was in the form of silver utensils, and not silver bars or ingots, itself proves that the silver utensils were purchased for use by the assessees and not purchased as and by way of investment, as alleged by the ITO. The silver utensils must accordingly be held to be the personal effects of the assessee not constituting capital assets. The income on sale of the said silver utensils is therefore not liable to capital gains tax.

8. The questions referred for opinion of this court are answered in the affirmative and in favour of the assessee.

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(V. C. DAGA J.)

(A. S. AGUIAR J.)

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